

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

WILLIAM DOUGLAS DAWSON,)	Civil Action No. 4:06-3205-SB-TER
)	
Petitioner,)	
)	
VS.)	
)	REPORT AND RECOMMENDATION
WARDEN STAN BURTT, LIEBER)	
CORRECTIONAL INSTITUTION,)	
)	
Respondent.)	
)	

Petitioner, appearing *pro se*, filed his petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254¹ on November 14, 2006.

On January 23, 2007, petitioner filed a motion for a hearing asserting respondents had “exceeded the fifty day rule and in doing so violated the limitations. . . since the fifty day limitation has expired, petitioner motions for the court to exercise its power and authority and hold a hearing in favor of the petitioner, for the contempt and negligence on the part of the respondent.” (Document #7).

On February 12, 2007, petitioner filed a “motion for relief by default” seeking relief on his habeas petition for respondent’s failure to file a response. Petitioner asserts that respondent failed to respond and then requested a thirty (30) day extension to which he did not comply. (Document #10).

¹ This habeas corpus case was automatically referred to the undersigned United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02, DSC. Because this is a dispositive motion, this report and recommendation is entered for review by the district judge.

A review of the docket report reveals that on January 8, 2007, respondent filed a motion for extension of time to make a return or otherwise plead. Respondent's response was due to be filed on January 8, 2007, but respondent requested a thirty day extension. On January 9, 2007, an Order was entered granting respondent's motion for extension and giving respondent until February 7, 2007, to make a return or otherwise plead. (Document #6). On February 7, 2007, respondent filed a second motion for extension of time to make a return or otherwise plead due to scheduled State and Federal matters and not being able to collect all of the records, prepare necessary copies, and gather information necessary to make a proper return. (Document # 8). This motion was granted and respondent was given until March 9, 2007, to answer. (Document #9). On March 8, 2007, respondent filed a third motion for extension of time based on respondent's counsel's inability to gather information to make a proper return in a timely fashion due to his case load in State and Federal court including a number of death penalty cases. Petitioner filed a response in opposition. Before this court made a ruling on the motion for extension of time, respondent filed a return and memorandum along with a motion for summary judgment. Thus, respondent's motion was granted on April 19, 2007. (Document # 24). Based on the above, respondent's return was timely.

Therefore, it is recommended that petitioner's motion for hearing (document #7) and motion for relief through default judgment (document #10) be DENIED in that respondent responded in a timely fashion pursuant to the orders granting an extension of time.

CONCLUSION

For the reasons set forth herein, it is RECOMMENDED that the petitioner's motion for hearing (document #7) and motion for entry of default (document # 10) be DENIED.

Respectfully submitted,

s/Thomas E. Rogers, III
Thomas E. Rogers, III
United States Magistrate Judge

April 20, 2007
Florence, South Carolina

The parties' attention is directed to the important information on the attached notice.